

1 we'll conclude this panel. Thank you very much
2 for your participation. We may have some
3 questions we might want to submit to you with
4 respect to some of the specifics, and if you
5 could respond to those, we would appreciate that.
6 Thank you.

7 We have one final panel before we go to
8 a public comment period. So, let's commence in
9 10 minutes, at 3:55.

10 (Recess.)

11 CHAIRMAN HOGEN: If you would have your
12 seats, please, our panel is assembled and we are
13 soon ready to proceed.

14 We are turning again to tribal leaders
15 and tribal leaders come to us from all across the
16 country here. The geography of the country is
17 well represented in this panel.

18 Chief Paul Spicer from the Seneca-Cayuga

19 Tribe of Oklahoma is present as is Chief Jim
20 Ransom of the St. Regis Mohawk Tribe, Rogelio
21 Elizondo from the Kickapoo Traditional Tribe of
22 Texas, and Erma Vizenor, Chairwoman of the White

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1 Earth Tribe, and the Pechanga Band from
2 California is represented by Chair Mark Macarro.
3 We are then ready to hear from the
4 Tribal Leadership. Chief Spicer?
5 Panel 6 - Tribal Leadership
6 MR. SPICER: Thank you, Chairman Hogen.
7 Thank you, Commissioner Choney, for allowing us
8 this time today.
9 Most of my prepared text was covered in
10 about the first two or three speakers. I'm not

11 an intellectual genius by any means, but what I
12 did, I discarded my prepared text and I made a
13 few notes as the day's gone by and I'd like to
14 address some of the things that I've noticed.

15 There was a lot of eloquence here today
16 and a lot of good speakers that made a lot of
17 excellent points, but those points have been
18 made, sir, all across the country at these
19 meetings that you've conducted and I'm just
20 wondering if they had no impact on the
21 Commission's decisions up to this point, how much
22 impact will they have today?

1 You know, in my heart, I'm wanting to
2 believe that you're truly considering what was
3 said today, but inside, I've got this nagging

4 little feeling that this is just to fill a
5 square. I'm hoping that my heart's telling me
6 the right thing, that what was said today is
7 considered.

8 I'd like to talk a little bit about the
9 blurring. Blurring and the bright line is not
10 addressed in any of the statutes or court cases
11 that have come up. It's a relatively new term.
12 We have adequate differences now between Class II
13 and Class III gaming. I'm not sure why it's
14 coming into question now.

15 The rules are there. You know, they
16 should be enforceable if they're rules. If this
17 is happening, why is Justice Department not
18 taking the tribes to court? As you're probably
19 aware, the tribe that I represent, the Seneca-
20 Cayuga Tribe of Oklahoma, has had two of the
21 major five gaming issue court cases. We won both
22 of ours that we were involved in, and what

1 basically I'm telling the panel and the
2 Commission is that we intend to challenge some of
3 these things in court again.

4 We want to take these issues using the
5 same lawyers that both sides have had in the past
6 before the same judges that have ruled in our
7 favor and hopefully those judges will once again
8 rule in our favor, but I don't know where this
9 blurred line and bright lights and bells and
10 whistles, where all that came from, but in my
11 opinion, it's an attempt to destroy Class II
12 gaming.

13 Now, those of us in Oklahoma, you know,
14 it's not a death knell. It takes away a lot of
15 our leverage with the state whenever the compacts
16 come up. We have no real weapons, but for some
17 of the states where the tribes don't have Class

18 III gaming, you're destroying them. You're
19 destroying their economy. You're destroying
20 their newfound status in life.
21 Some of the folks have talked about
22 clinics and have talked about schools. These are

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1 important things. I know sometimes when you're
2 in Washington and you look out, it gets a little
3 blurry out there. That might become a blurred
4 line, but there's real people out there, sir,
5 with real needs and Indian gaming has brought our
6 people to the point where we're now able to take
7 care of ourselves to the degrees that we've never
8 been able to in the past.
9 But with that being said, and I don't

10 intend to be confrontational, but this is
11 something that's really important to me, and it's
12 coming from the heart, but with that in mind, I
13 truly hope that you are listening to what the
14 folks are telling you today because real lives
15 are at stake.

16 Thank you, sir.

17 CHAIRMAN HOGEN: Thank you, Chief
18 Spicer. Let me just respond to a couple of the
19 concerns you mentioned.

20 Why hasn't the Department of Justice
21 been out there prosecuting cases? Well, I'm
22 sure, you know, the Seneca-Cayugas and others

1 taught them a lesson and they're a little gunshy,
2 but I think they might have been out there with

3 respect to some of the activity, but NIGC
4 encouraged them to participate in our plan; that
5 is, rather than prosecute tribes for criminal
6 violations of the Johnson Act that they
7 perceived, why not let NIGC go forward with an
8 appropriate regulatory scheme?

9 I think they bought into that. Now that may not
10 be the only explanation, but at least I think
11 it's part of a situation.

12 We will very seriously consider not only
13 what's being said today and what has been said
14 today, but what was said to us when we met with
15 over 70 tribes individually.

16 I know that the advisory committee that
17 we established was frustrated that more of their
18 concerns weren't reflected in our proposal and
19 certainly we also did have dialogue with the
20 Department of Justice that fit into the process,
21 but we are listening and we'll do our very best
22 to try and come down at the right place.

1 Chief Ransom?

2 MR. RANSOM: Yes. On behalf of our
3 tribe, thank you for the invitation to present as
4 part of this afternoon's hearing panel.

5 We will be submitting written comments
6 in addition to my testimony today.

7 I think that we're a tribe that has both
8 a bingo hall with Class II games and a casino
9 with Class III games. In addition, one of our
10 tribal members was selected to serve on the
11 Federal Tribal Advisory Committee. I think
12 because of this, we believe we bring a unique
13 perspective to this hearing.

14 I wanted to start by talking about
15 process and basically we're disheartened by the
16 process and the decisions reached by the NIGC in

17 issuing these proposed regulations. I think it's
18 important to point out that the Commission's own
19 tribal consultation policy requires meaningful
20 government-to-government consultation with Indian
21 tribes.

22 How can the Commission claim its

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1 consultation with Indian tribes is meaningful
2 when it ignores the voices of tribes who keep
3 saying these proposed regulations are over-
4 reaching and contrary to existing law?

5 In addition, I think that you took some
6 pride in pointing out that the Commission sent
7 out over 500 separate invitations to tribes and
8 that it conducted over 300 separate government-

9 to-government consultation meetings with
10 individual tribes, their leaders, our
11 representatives regarding development and
12 formulation of these proposed regulations.

13 However, what's missing is a summary of
14 what the tribes told the Commission about the
15 proposed regulations. Why wasn't a summary of
16 comments made at the numerous tribal
17 consultations and why wasn't that provided as
18 part of the Federal Register Notice for these
19 proposed Class II regulations?

20 I think it's been made clear that the
21 Commission changed the draft regulations to
22 address concerns of the Department of Justice,

1 but we've seen no indication that it has in any

2 way been responsive to concerns identified by
3 tribes.

4 The Federal Tribal Advisory Committee
5 had the potential to help the NIGC promulgated
6 meaningful regulations. However, what value was
7 there in the tribal representatives providing
8 insight, advice and assistance to the Commission
9 when, in the end, the Commission ignored any
10 substantial insight and advice and assistance
11 that these tribal representatives provided?

12 We're concerned that the NIGC's proposed
13 new Class II classification standards and the new
14 definition of electronic or electromechanical
15 facsimile are unnecessarily too restrictive and
16 grossly inconsistent with IGRA, established case
17 law and previous decisions made by the
18 Commission.

19 We strongly disagree that slowing down
20 Class II games and making them unattractive to
21 players is the best or only way to distinguish
22 Class II and Class III games.

1 We believe that uniform standards can be
2 created for Class II games to distinguish them
3 from Class III games. We believe that the
4 Federal Tribal Advisory Committee could be the
5 venue to create these standards and then the
6 standards could then be combined with
7 certification of Class II testing laboratories to
8 ensure that Class II games are timely certified.
9 Instead of crushing technology, the NIGC needs to
10 embrace it and make it work for both Class II and
11 Class III games.

12 We believe much of the challenges of
13 today are because the technology is moving faster
14 than the regulators, but this can be fixed by
15 investing in better trained and more

16 knowledgeable regulators.

17 Our tribe is finding out that Class II

18 games and Class III games can co-exist on the

19 same reservation. Last year when we amended our

20 tribal state gaming compact that allowed us to

21 install slot machines, we were concerned that it

22 would negatively affect the play of Class II

1 games. We've since learned that instead, our

2 Class II and Class III gaming facilities are

3 complementing each other. Tribal gaming revenues

4 continue to increase from both gaming facilities.

5 What I can now say, though, is that if

6 the proposed Class II regulations go forward as

7 written, it will eliminate all 300+ Class II

8 gaming devices at our Mohawk Bingo Palace. It
9 will also negotiate the hard work for our Tribal
10 Gaming Commission in ensuring that these devices
11 meet the current IGRA definition of Class II
12 games.

13 More importantly, it will have a
14 devastating effect on revenue and employment
15 contributions made to our tribe. Currently, over
16 one-third of our revenue is generated from Class
17 II gaming. In addition, we employ a 120 people
18 within our Class II gaming facility.

19 Today, we are better able to meet the
20 essential governmental service needs of our
21 tribal membership thanks to gaming. As the U.S.
22 Administration continues to make drastic cuts to

1 domestic programs, we are able to fill much of
2 that gap through tribal gaming revenue. You are
3 about to change that.

4 Therefore, we believe that the NIGC
5 should be required to conduct a study of the
6 economic impacts of the proposed Class II
7 regulations on tribes across the country. We
8 believe that such an economic study will show the
9 devastating economic impacts on tribes who
10 operate Class II games that the proposed
11 regulations will eliminate. The NIGC must
12 consider these impacts from its proposed
13 rulemaking.

14 Thank you.

15 CHAIRMAN HOGEN: Thank you, Chief
16 Ransom. Rogelio Elizondo, and I understand you
17 will be assisted by Rayburn Elizondo, who will
18 interpret your testimony.

19 MR. ELIZONDO: (Through interpreter).
20 I'd like to say good afternoon to Chairman Hogen,
21 Commissioner Choney and everybody here.

22 My Indian name is Apeccuka. My English

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1 name is Rogelio Elizondo. I'm a council member
2 of the Kickapoo Traditional Tribe of Texas. I am
3 honored to be here representing my tribe today.

4 Thank you for allowing me to speak on behalf of
5 my tribe.

6 We were seasonal migrant workers and
7 were forced to leave our traditional ways behind
8 while we went to make a living. The casino
9 operation has allowed us not to have to leave our
10 ways while being able to make a living.

11 When Congress recognized that we have
12 the right to have gaming, we were able to
13 generate jobs for our tribal members without
14 sacrificing our traditions. We no longer have to

15 migrate north to earn a living. We have jobs
16 within our reservation. Our children can stay in
17 school all year-round. We are able to provide
18 health services to our tribal members.

19 When U.S. Congress passed the Indian
20 Gaming Regulatory Act, IGRA, it intended our
21 tribe to promote our ability to create a strong
22 government, tribal economic development and

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1 tribal self-sufficiency. We, the Kickapoo
2 Traditional Tribe of Texas, depend on our Class
3 II gaming facility to achieve those goals.

4 The plan to change the definition of
5 rules under IGRA will have the effect of taking
6 away from our tribe its right to promote our

7 self-determination and would impact much-needed

8 social services to our tribal members.

9 The best option would be that the

10 Commission would withdraw the proposed

11 regulations since the current law provides

12 efficient distinctions between Class II and Class

13 III gaming.

14 But if the Commission decides to go

15 forward, then I make the following

16 recommendations: no restriction on game

17 displays, no restrictions that would slow the

18 speed of play, and to include a provision

19 grandfathering any game already in operation by a

20 tribe that is in the procedures process.

21 The tribe will submit detailed written

22 comments for the record before the deadline.

1 I would like to thank you for allowing
2 us to speak today.

3 CHAIRMAN HOGEN: Thank you. Thank both
4 of you. Chairwoman Vizenor?

5 MS. VIZENOR: Commissioner Hogen,
6 Associate Commissioner Choney, NIGC staff, thank
7 you for the opportunity to testify here today as
8 to the adverse impacts the proposed Class II
9 gaming regulations under consideration by the
10 NIGC will have on my tribe and our members.

11 Indian gaming has been of tremendous
12 benefit to a few tribes, of modest benefit to
13 many tribes. We are one of the tribes who have
14 benefitted modestly from Indian gaming. We are a
15 remote rural Indian tribe with a large tribal
16 population. For us, every dollar counts.

17 We have relatively a large reservation
18 that has been subjected to massive non-Indian
19 land grabs that have greatly diminished our trust
20 land base over the years. In other words, we

21 have a checker board reservation. Because of
22 this, White Earth, with the assent of the NIGC,

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1 has used all authority available within the four
2 corners of the Indian Gaming Regulatory Act to
3 regulate charitable gaming on our reservation and
4 licensed Class II machines at "offsite" non-trust
5 land locations within the reservation.

6 The bulk of this gaming consists of
7 Class II bingo machines and pull tabs. These
8 machines are very popular and generate
9 significant revenue for our tribe. These
10 machines allow us to regulate charitable gaming
11 at these locations, making even more gaming
12 revenue available to our tribal government.

13 If the NIGC adopts the proposed rule as

14 currently drafted, it will have a devastating
15 impact on our Class II gaming operations. First
16 of all, the games we currently operate will not
17 comply with the new proposed regulations. We
18 will need to replace our current games with
19 different ones. This will come at a tremendous
20 cost to us.

21 In addition, the new games we will be
22 forced to use as replacements under the proposed

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1 regulations will operate at much slower speeds
2 and the display and entertainment features of the
3 games will be dramatically altered and
4 diminished.

5 Quite frankly, games available under the

6 new regulations simply may not be viable. This
7 significant source of revenue would be lost to
8 the White Earth Tribe.

9 Frankly, we have no idea why NIGC is
10 currently contemplating these regulatory changes.
11 The current set of regulations concerning Class
12 II gaming have been consistently opposed by the
13 Department of Justice. The Department of Justice
14 has frequently sued tribes in an effort to
15 emasculate the current Class II regulations.
16 Every time they have lost.

17 This attack by the Department of
18 Justice, at least two different federal Circuit
19 Court of Appeals have decided that the present
20 regulatory scheme is proper and legal.

21 It appears that what the NIGC is
22 proposing to do is to accomplish through

1 administrative what the Department of Justice has
2 failed to achieve through litigation; that is, to
3 overturn administratively what the federal courts
4 have already confirmed as legal.

5 In other words, Congress has spoken and
6 the courts have definitely interpreted the
7 statute. What we see happening is the NIGC
8 attempting to amend the Indian Gaming Regulatory
9 statute through administrative regulation. This
10 strikes us as very underhanded, indeed
11 unconstitutional, a way of achieving a result
12 that would work to the stunning disadvantage of
13 many tribes.

14 If the NIGC and Department of Justice
15 really feel that the current statutory Class II
16 scheme is not proper and needs to be changed,
17 then let us debate the issue in Congress. Each
18 party with an interest in this issue can make the
19 best case. In this public forum, the best

20 arguments will prevail. This strikes us as fair,
21 more open and even-handed way of resolving the
22 issue than through a regulatory process the

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1 administration alone decides, and we could be
2 terribly disadvantaged by your decision.

3 These regulations are complex and
4 technical, but this is not a theoretical issue
5 for us. It is real and fearsome. Let me please
6 put it bluntly. Because of the revenues we are
7 deriving from these Class II gaming machines,
8 including offsite gaming, we are able to fund the
9 following three programs, in spite of the
10 continually shrinking federal assistance and
11 contrary to the federal trust responsibility for
12 our lands and members.

13 We fund elderly nutrition, tribal
14 ambulance service, and youth athletic programs.
15 Should the NIGC adopt as final the proposed rule
16 as currently drafted, two of these programs will
17 have to be eliminated. Should you finalize the
18 proposed rule, please help me, advise me as to
19 which of these programs you would cut if you were
20 in my position.

21 Your final decision is that real for us.

22 We hope this testimony helps bring this reality

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1 home to the NIGC.

2 Thank you for considering White Earth's
3 view on this very important matter.

4 CHAIRMAN HOGEN: Thank you, Chairwoman.

5 We will conclude then with Chairman Mark Macarro
6 from the Pechanga Band.

7 MR. MACARRO: (Indian Language.) Good
8 afternoon, Mr. Chairman and Commissioner Choney.

9 Thank you for the opportunity to testify
10 regarding the efforts of the NIGC to revise the
11 manner in which games are classified under the
12 IGRA.

13 My name is Mark Macarro. I'm the Tribal
14 Chairman of the Pechanga Band of Luiseno Indians.
15 We've been federally recognized since 1882. The
16 Pechanga Indian Reservation is located adjacent
17 to Temecula in Southern California where we
18 operate the Pechanga Resort and Casino. We've
19 been in operation since 1995 and currently, we
20 employ more than 5,000 people.

21 Gaming has clearly become an important
22 source of revenue for both the Band, our local

1 and regional economies.

2 It's for this reason that I'm here today
3 to voice Pechanga's opposition to the
4 Commission's current efforts and we urge you not
5 to promulgate these rules.

6 It's our belief that this rulemaking
7 threatens not only the viability of Class II
8 gaming but in fact all of Indian gaming. One
9 need only consider the events of the last several
10 weeks to see the long-term implications of this
11 rulemaking.

12 For the past several years, a number of
13 California tribes have been attempting to
14 renegotiate our gaming compacts. While our
15 failure to reach agreement has often been
16 characterized in the press as being solely about
17 revenue sharing, in truth, it's been more about
18 attempts by the state to subject the tribes to an

19 unusual degree of local and outside control.
20 Well, after much negotiation recently,
21 at the end of August, a compromise was eventually
22 reached and nonetheless, because of politics as

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1 usual and because of the influence of a labor
2 union with a history of corruption, we were
3 unable to even obtain a legislative hearing or a
4 vote on our compact.
5 As it stands, we must return to fight
6 another day and we plan to do just that. Getting
7 to this point, however, was not easy and we must
8 ask ourselves where would we be without the
9 alternative of a viable Class II market?
10 If the Commission moves forward with
11 this rulemaking, all existing Class II games will

12 become Class III. While new Class II games will
13 eventually be developed, because of the arbitrary
14 requirements this rulemaking would place on them,
15 these new Class II games will be so slow and
16 cumbersome as to render them unprofitable.

17 Under the existing regulatory scheme,
18 California tribes were able to only negotiate a
19 compact that could be viewed at best as an
20 unbalanced compromise. What will happen when we
21 have no other option? When we have no viable
22 alternative to Class II or Class III gaming?

1 Unfortunately, the state will simply
2 assume that it's only a matter of time before the
3 tribes are willing to agree to its demands,

4 however outrageous they may be. Our leverage
5 will become a thing of the past and tribes will
6 be at the mercy of uncooperative states.

7 It's because of this eventual result
8 that the Pechanga Band strongly opposes this
9 rulemaking. Why does the Commission feel the
10 need to destroy an entire class of gaming? The
11 existing scheme is in line with IGRA. We've
12 heard that several times today. It also models
13 the holdings of the courts and in fact, we
14 understand that the Commission's existing
15 definitions have been upheld by both the 8th and
16 the 10th Circuit Courts of Appeal.

17 The Commission is acting alone here.
18 There has been no court ruling or congressional
19 enactment that supports the NIGC's current
20 actions. The Commission mistakenly asserts that
21 if it does not provide a bright line between what
22 is Class II and what is Class III, Congress will

1 have to step in and eventually put an end to all
2 of Indian gaming.

3 The Commission claims that because of
4 advances in technology, the Act is being
5 stretched, that it's not working as intended, and
6 that Class II gaming is awash with slot machine
7 facsimiles. In reality, Congress anticipated the
8 Class II gaming would grow alongside technology.

9 As has often been noted, Congress
10 intended that tribes have maximum flexibility to
11 utilize Class II gaming for the purposes of
12 economic development. Technology is never
13 intended to limit the commercial success of a
14 product or an industry.

15 I challenge you to point to just one
16 industry where the addition of technology was
17 intended to hinder its development.

18 The bottom line is that there is no
19 congressional intent that Class II gaming not be
20 profitable.

21 Interestingly, it's only the Commission
22 and the Justice Department, for that matter, that

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1 seems confused by the distinctions between Class
2 II and Class III games. The courts understand
3 these differences and believe me, so do our
4 customers.

5 For some reason, however, the Commission
6 now wishes to require that Class II games be
7 visibly different from those that are Class III.
8 This ludicrous conclusion clearly is devoid of
9 any credible analysis, legal, industry-based, or
10 otherwise.

11 IGRA does not require that a player be
12 able to discern between the two immediately upon
13 approaching the games, and the courts have said
14 as much. To place such a requirement on Class II
15 gaming is simply ridiculous and perhaps more
16 importantly, it frustrates the intent of IGRA.

17 If, however, the Commission is so
18 concerned with the outward appearance of the
19 games, then simply require us to put a sign on
20 them and be done with it. Remove all other
21 arbitrary requirements from the regulation.

22 The Commission has produced no evidence

1 that the general public is confused or at risk.
2 There's no justifiable reason to restrict the

3 flexibility Congress so clearly intended.

4 Returning to the Commission's claim that
5 if they do not act, Congress will, I would argue
6 that the Commission is saving Congress the
7 trouble. By decimating the negotiating power of
8 tribes, it is only a matter of time before tribal
9 state compacts are a thing of the past and I
10 would add that if the Commission is so concerned
11 with provisions of the Act that are not working
12 as intended, why is not actively pursuing a
13 seminole fix? Why is the Commission not seeking
14 an expressed exemption to the Johnson Act for
15 technologic aids?

16 Respectfully, I believe that the
17 Commission's time would be better spent restoring
18 the balance Congress so clearly intended when it
19 enacted IGRA than by placing arbitrary
20 restrictions on Class II gaming.

21 At the very least, the Commission should
22 avoid unwarranted efforts that tilt this balance

1 even further away from the tribes and toward the
2 states.

3 We heard a panel today. In my head, I
4 have referred to that as the "red flag panel."
5 It had two individuals who were advocates of the
6 states' interests, and I would submit that they
7 love your proposed regulations.

8 Why? We should ask ourselves why did
9 Tom Gede and the woman from Washington State love
10 these regulations? I'll give you one answer.
11 It's because these proposed regs jam us tribal
12 governments, weakens our tribal decisionmaking
13 prerogative and takes away our leverage. That
14 alone, that double red flag warning alone should
15 be enough reason to not promulgate these
16 regulations because it is not going to serve

17 tribal interests.

18 Again, I'd like to thank you for the

19 opportunity to provide our views on the

20 Commission's current endeavors and I'm happy to

21 answer any questions you may have.

22 CHAIRMAN HOGEN: Thank you, Chairman

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1 Macarro.

2 (Applause.)

3 Final Public Comments

4 CHAIRMAN HOGEN: Are there public

5 comments or questions with respect to the

6 testimony of this panel? Yes, sir?

7 MR. ENYERT: Good evening. My name is

8 Charles Enyert. I'm the Chief of the Eastern

9 Shawnee Tribe, and I want to thank you for

10 letting me be able to make some comments.

11 I would first like to read a statement

12 and then I would like to share with you some

13 observations that I've had from this meeting

14 today.

15 Like George Tiger, I like to listen and

16 I have saved my comments to the very end because

17 I wanted to hear all the panels.

18 So, first, the statement. The NIGC's

19 proposal for Class II classification standards

20 and definition invade tribal sovereignty.

21 Indian tribes are sovereign entities

22 with tribal governmental powers that are

2 government. The Indian Gaming Regulatory Act, 25
3 USC 2705(b)(1), recognizes Indian tribes as
4 sovereign nations and determines the tribes are
5 the primary regulators of Indian gaming.

6 The NIGC proposed regulations exclude
7 tribal governments from participating in the
8 classification of games and allows independent
9 game testing laboratories that are subject to
10 NIGC oversight to make legal determinations
11 regarding the classification of games. If we did
12 that in a tribe, we would say we have a conflict
13 of interest, is what would be thrown out at us.

14 Tribal governments would be prohibited
15 from creating their own testing laboratories nor
16 could tribal regulators approve the placement of
17 games on casino floors without the approval of an
18 NIGC-controlled lab. Each of these proposed
19 regulations invade tribal sovereignty and the
20 inherent right of tribal governments to exercise
21 authority over internal tribal affairs.

22 These proposed regulations grant the

1 NIGC the authority that simply does not exist
2 under federal law.

3 Now, some of my observations today.

4 Like I said, I waited till the very end and,
5 please, if I have missed something, please
6 correct me.

7 One of the things I have observed, that
8 not a single Indian nation today has said they
9 were in favor of the regulations. Am I correct
10 on that? I have not heard one single Indian
11 nation be in favor of it.

12 I did hear some states that are in favor
13 and that's already been talked about, how they
14 would profit from this, your proposal, and I'd
15 just like to share a couple comments I have heard

16 today, and these are not my comments. All right?
17 One of the comments I heard, that they
18 feel that the public hearings are a way for the
19 NIGC to say that they met their obligations to
20 have consultation with the Indian nations. Some
21 feel that you listen but you don't hear. We ask
22 you today, hear what we're saying, take it to

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1 heart. This is a very important thing to the
2 tribes.
3 Everything in your proposal, and I'll
4 just name a few, has an impact on Indian
5 programs, such as economic development, health
6 care, tribal social programs, housing, jobs not
7 only for tribal members and non-tribal members,
8 tribal self-sufficiency, self-determination, law

9 enforcement, elders programs, and I can go on and
10 on. It affects every one of them because it
11 affects the income that we have coming in to the
12 tribes.

13 As a small tribe, it is very important
14 that the revenue, the profits on our gaming, keep
15 coming because this is what goes back into our
16 tribe. This is what goes back to our tribal
17 members through educational programs and other
18 programs that I have mentioned.

19 So, I ask you, please, don't just
20 listen, hear what we're saying.

21 CHAIRMAN HOGEN: Thank you.

22 (Applause.)

1 MR. STRAUS: Kevin Parker, Stillaguamish

2 Tribe.

3 Sir, you mentioned earlier for us to
4 read the preamble. Actually, we had. In your
5 own preamble, you stated that the tribes strongly
6 disagree -- the panel that was put together, I
7 believe Chief Ransom's tribe was part of that, I
8 know the Melvin Daniels and the Muckleshoot Tribe
9 was also part of that.

10 You stated they strongly disagree with
11 the decisions made by the Commission regarding
12 auto-daubing, time delays, advocating authorizing
13 wholly electronic pull tab games, as well as the
14 tribes asking that no changes to the current rule
15 definitions of electronic or electromechanical
16 facsimiles of games of chance be made.

17 Sir, Mr. Daniels let me know and I'm
18 kind of speaking for him, he wasn't able to make
19 it out here. He wanted me to point out that you
20 folks took nothing substantial that they brought
21 up and brought it to the table. So, he felt like
22 it was a waste of time on his part. I hate to

1 put -- I'm sure that he would put it more
2 eloquently than I do, but that was his point.

3 Further, your preamble states that the
4 Commission is bound by Congress's intent as
5 expressed in IGRA to promulgate rules that
6 clearly distinguish technological-aided Class II
7 games from electronic or electromechanical
8 facsimiles of any games of chance.

9 Whereas we appreciate that, everyone has
10 come up and let you know that we understand that
11 you feel like something needs to be done. We'd
12 like to help you in that. We'd like to work
13 together with you. I think the vendors, the
14 tribal leadership, the operators, the gaming

15 commissions would all like to help you in this.

16 Sir, I almost feel like what's going to

17 happen before the ink is dry on the Federal

18 Register, lawsuits are going to be issued. To

19 me, that is such a waste of money that can be

20 spent on tribal programs, elder care, youth

21 services, and to me, it's such a waste.

22 I mean, every one of these tribes that

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1 have come up today have told you, sir, please

2 stop, stop and think about what's going on. I

3 mean, we understand that you're trying to do the

4 right thing and no one faults you for that,

5 either one of you gentlemen. It's just if you'd

6 stop and listen to the folks who were here.

7 The last learned gentleman brought up a

8 good point. Only two people agreed with you all
9 day and that was the State of Washington and also
10 the Attorneys General Representative and that
11 should be cause for pause right there.

12 Thank you.

13 CHAIRMAN HOGEN: Thank you.

14 (Applause.)

15 CHAIRMAN HOGEN: Yes, sir?

16 MR. BOON: Good afternoon, Chairman
17 Hogen, Mr. Choney.

18 Doug Boon, CEO, Little Creek Casino,
19 Squakin Island Tribe.

20 I just wanted to make a quick point,
21 that I guess probably the same thing that's been
22 said by my two colleagues before this. It's a

1 little difficult for me to go back to the tribe
2 that I represent and that I work for to say that
3 this trip that we took down here to come here and
4 testify at this hearing has been meaningful
5 knowing that during this entire process and this
6 entire time, you have been getting the same thing
7 that we're talking about today from all the
8 tribes that you visited and all that you spoke
9 with as well as from the committee that was
10 formed to help form these rules and regulations.

11 I do hope very honestly that you listen
12 to what we have to say and you hear what we have
13 to say and that you take that to heart and that
14 you would make those changes to these proposed
15 regulations that need to be done because it is
16 sincerely my fear that this is just going to make
17 matters worse if it does not and that it's going
18 to create a much larger issue within Indian
19 gaming and for all of us as tribes.

20 The issue isn't money, that's not what's
21 at hand, and the issue is people's lives, and I

22 hope that you do hear that.

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1 Thank you.

2 CHAIRMAN HOGEN: Thank you.

3 MR. BATTIN: My name is Jim Battin. I
4 am a California State Senator, and I wanted to
5 give another perspective, I guess, from the state
6 side since the people who have represented
7 themselves as representing their states certainly
8 have acted in favor of your proposed regulations.

9 I, for the last 12 years, have been a
10 member of the California State Legislature. I
11 represent Southern California. I represent
12 Riverside County. I have several gaming tribes
13 in my area. I have been involved in the issues

14 in California from the very beginning in terms of
15 the ratification of the 1999 compacts. I was the
16 author of the bill that ratified them.

17 I give you all this background because I
18 want to make the point that it seems like this is
19 a solution looking for a problem.

20 I live in the world where we have a
21 concentration of tribal casinos. My constituents
22 are very clear to me when they talk about why

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1 they go to an Indian casino, what they're looking
2 for. It's entertainment. They frankly don't
3 know nor do I believe they care if it is a Class
4 II or a Class III machine. They're there because
5 they want to go there and have fun. That's why
6 the entertainment industry and gaming in the

7 United States is so successful. That's why it's
8 so popular around the country. That's why it's
9 so successful in Southern California.

10 They do not care that it is Class II or
11 Class III, and I do not understand why the
12 Commission would want to then try to take away
13 something from the tribes trying to provide a
14 product to their consumer, unless Chairman
15 Macarro hit it right on when he said it's just a
16 point of leverage.

17 In California, because of the compacts
18 that were signed in 1999, there is an arbitrary
19 2,000 machine cap. The biggest complaint I get
20 from my constituents about slot machines in my
21 district is that they can't get on one. They're
22 tired of waiting half an hour on a weekend

1 because they just can't get on one, and
2 unfortunately, they actually blame the Indians
3 for it because they don't understand that the
4 government has imposed this on them.

5 In California, we have negotiated with
6 the tribes and the governor to allow for more
7 machines because the public is demanding it.

8 The leverage point that the tribes have
9 was to say we are going to use our right to go to
10 Class II gaming unless you will negotiate in good
11 faith which the law requires and we want to meet
12 you, you meet us, and indeed that's exactly what
13 Governor Schwarzenegger did.

14 Around the country, there may be
15 different situations, and I can only speak to
16 California, but the fact of the matter is I don't
17 understand the necessity for this regulation. I
18 don't understand why we're looking to complicate
19 a very vital and growing industry.

20 One of the -- well, in California, the

21 biggest employer in terms of growth, positive

22 growth, is entertainment, is gaming, Indian

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1 gaming. It is no mistake that the area I
2 represent is on fire with our economy. It's no
3 mistake that the tribes that are my constituents
4 also are one of our best neighbors and provide
5 tremendous benefits to the community, from
6 donating things to the local police and fire, to
7 the local non-profit organizations, to saving
8 hospitals, to coming to aid when there are
9 disasters, like when California catches on fire,
10 they're there always, and that money is coming
11 from Indian gaming.

12 To complicate it, I think this is just

13 unnecessary, and I wanted to give you just more
14 of another state's perspective because as a state
15 representative, I understand that our U.S.
16 Constitution tells us that we have to respect the
17 tribes as a partner, as one of the three branches
18 of government that are named in our Constitution,
19 that the state and the federal government and the
20 tribes, and that it is just not right to try to
21 give the state a leverage on something that is
22 beneficial for all.

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1 Thank you.

2 (Applause.)

3 CHAIRMAN HOGEN: Thank you. Mr. Green?

4 MR. GREEN: My name is Jess Green. I'm

5 a Chickasaw Indian, but I'm also an attorney, and

6 I've been fortunate enough on behalf of Chief

7 Spicer to do two litigations for the Seneca-

8 Cayuga Tribe.

9 I come from a rural background and

10 growing up, there were lots of fences built to

11 keep things out. When IGRA was passed in 1988,

12 there was a fence erected in Class III that kept

13 us out of Class III, but there wasn't a fence

14 built around Class II gaming because we were

15 using our inherent sovereignty. We don't need a

16 fence.

17 CHAIRMAN HOGEN: Thank you, Mr. Green.

18 (Applause.)

19 MR. REID: Morris Reid from Chukchamsi,

20 Picayune.

21 I'd just like to say this. With this

22 change to our amendment that would indirectly

1 amend IGRA through a back door move by DOJ, the
2 elimination of the good intentions of the
3 Congress to Indians and with this elimination
4 would come the elimination of economic prosperity
5 for the tribes. It would eliminate the
6 permitting tribes to embrace technology
7 advancements. It would eliminate economic
8 development, self-sufficiency, stronger
9 governments, sovereignty, and leverages in
10 negotiation in good faith with states.

11 It would also eliminate the federal
12 court decisions, NIGC regulations and
13 congressional legislation history that provided
14 that Johnson Act does not apply to Class II
15 gaming.

16 Thank you.

17 CHAIRMAN HOGEN: Thank you. We have the
18 panel present, but we also have the public
19 comment period, and I think maybe rather than

20 keep the panel here throughout that public
21 comment period, we will thank them very much for
22 the impressive testimony you offered, and we will

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1 continue with the public comments. Thank you.

2 (Applause.)

3 CHAIRMAN HOGEN: Are there further
4 questions of the Commission or comments with
5 respect to the proposal that's under
6 consideration? Yes, ma'am?

7 MS. SWANSON: Hi. I'm Shana Swanson
8 from the Stillaguamish Tribe of Indians, and I
9 know that you've heard a lot from our tribe.

10 I personally would like to thank all the
11 people that came here to put forth their

12 opinions, facts and feelings on the proposed NIGC
13 changes. Most of what we have heard today has
14 been in opposition of these changes.

15 We from the Stillaguamish Tribe in
16 Washington State strongly urge that the
17 Commission consider what has been said today and
18 not to make this trip a waste of time and assets
19 of the tribal people.

20 Thank you.

21 CHAIRMAN HOGEN: Thank you.

22 (Applause.)

1 CHAIRMAN HOGEN: Joe?

2 MR. WEBSTER: Mr. Chairman, in light of
3 the comments today, I think there's certainly a
4 lot of reasons that have been expressed that

5 would justify withdrawing the current proposal.

6 However, at the very least, in light of
7 the comments made, the concerns raised, and the
8 request that you've made for specific suggestions
9 on aspects of the proposal, I wonder if the
10 Commission might be willing to agree to at least
11 extend the deadline period for the current
12 proposal.

13 CHAIRMAN HOGEN: When we finish the
14 hearing today, we will convene and we will decide
15 how we're going to proceed and that will be, I
16 guess, a suggestion that we will consider.

17 Yes, sir?

18 MR. MATHIAS: (Indian Language.) My
19 name is Reuben Mathias. I'm from the
20 Confederated Salish and Kootenai Tribes of
21 Montana.

22 On behalf of my people, I come forward

1 to you to ask you not to do what you're trying to
2 do because it's going to devastate a lot of
3 people, especially in the ways of the economy
4 stuff.

5 Also, you're infringing on our rights as
6 sovereign people. You're trying to take away
7 some things that you shouldn't be. You know, I
8 sat in here all day thinking about these things
9 and looking at these walls and wondering how many
10 tribal people have come in here to state their
11 case amongst the United States Government and the
12 senators and all this, how many times they've
13 been in here and how many times are we going to
14 be in here in the future.

15 What other way are you going to think
16 about that's going to hurt us as you go through
17 life? You know, us people, Indian people, we
18 don't do that. We sit there and we look to our

19 seven generations to come to find out what we're
20 going to have here.
21 What we have here today in our Indian
22 Country has been given to us by our forefathers

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1 that have prayed and begged, fought and died for
2 us, shed blood in this country and abroad on the
3 other side of the ocean. This is what we're all
4 about here, is about our future, not about today.
5 Our day today is done. It's about tomorrow when
6 we have to start praying hard to find out what
7 our children are going to have. That's what
8 we're talking about, our Indian sovereignty
9 rights.
10 We have the right to control our own

11 people. We have the right to watch what they're
12 doing. We're not people that are going to go out
13 and become mobsters and things like that. We're
14 not that kind of people. We don't treat
15 ourselves that way. We don't steal. We don't do
16 those kind of things, and I hear this coming that
17 we're being accused as criminals because we're
18 taking up some bingo parlor or some casino that's
19 going to advance my people into certain areas of
20 lawyers or medicines or things like that that
21 you're not looking at, and our educational
22 system.

1 You talk about our Indian children who
2 don't have an education, who can't get an
3 education because the tribes can't afford it, and

4 we look to the government, the United States
5 Government and they turn us away just as fast as
6 they can.

7 These are the things that you need to
8 look at, sir. I'm very happy that you're doing
9 this, bringing this up, because we gotta put a
10 stop to you, you know.

11 (Laughter.)

12 MR. MATHIAS: We gotta put a stop to
13 you. I hope when you go home tonight and you sit
14 down and you look at your grandchildren and you
15 look at them and you look at me and you tell me
16 where your heart is at. This is what I just want
17 to share with you.

18 CHAIRMAN HOGEN: Thank you. Let me
19 share --

20 (Applause.)

21 CHAIRMAN HOGEN: Let me share a few
22 things with you and the group.

1 I do think of my grandchildren. I have
2 a grandchild, a beautiful granddaughter. If I
3 could wave the wand, I would like the structure
4 to be such that all programs were fully and
5 adequately funded for tribes and Indian people,
6 but that's not the job they gave me nor do I have
7 the resources at my disposal to do that.

8 If every decision I could make was so
9 that tribes could make more revenue, I'd have the
10 best and easiest job in Washington. We are
11 tasked with ensuring that there is integrity in
12 Indian gaming, and most of the time, if we can,
13 when we deal with tribes, whether it's on
14 background issues or contract issues or
15 classification issues, if we can, we say yes, and
16 if it's not right, we try to say can we help you
17 fix it?

18 But there are other things we have to
19 say no, say no, you've done that wrong, no, you
20 have to fix that, and if you don't, we'll impose
21 a penalty, not because we want to keep anybody
22 down, but we want to ensure that integrity in

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1 this marvelous industry that has blossomed since
2 the passage of IGRA in 1988.
3 It's been suggested that we're coming up
4 with a solution here in search of a problem. We
5 have a problem. We issued some advisory opinions
6 because there was a desperate need to try and
7 give guidance to what would be accepted in view
8 of the Johnson Act, in view of the language of
9 IGRA, as to what could be permissible on Class II

10 floors, and it was really difficult because there
11 was not that clear guidance.

12 There was this conflict between yes,
13 Class II can use computers and electronic and
14 technologic aids. No, you can't become an
15 electronic facsimile of a game of chance.

16 We had proposals come to us where the
17 game played bingo, but there was really no
18 significance to winning the bingo game. It was
19 just a pretext to get into a pool to see what
20 prize you won and that crosses the line. That
21 becomes Class III gaming.

22 It's been suggested we're going to

1 eliminate what the courts have ruled. We're
2 trying to build on what those cases involving the

3 Mega Mania and the Lucky Tab II decisions set
4 down, that they set out some guidance, and, you
5 know, the game that was permissible took two
6 minutes to play, had to have a dozen people to
7 play, and we've come up with a set of rules that
8 says you can play with two people and you can
9 play it in eight seconds. I don't think that's
10 eliminating those decisions.

11 I think there's a need to do this, and I
12 don't know that we've charted the perfect course
13 or the best course, and we're certainly going to
14 study very carefully, very hard what has been
15 said and what has been sent to us and what will
16 be said and sent to us.

17 But, you know, it's with my
18 granddaughter in mind and, you know, those folks
19 back at Pine Ridge that so desperately need a
20 step up, a way to broaden the economic
21 opportunity, but we've got to keep the industry
22 strong and viable and keep integrity in it and

1 give the folks in Congress and the public the
2 confidence they need to keep this going.

3 So, sir, I don't take lightly, you know,
4 the responsibility that we have, and I will be
5 thinking about the folks at Salish and Kootenai
6 as well as we try to get to the right place.

7 MR. MATHIAS: Thank you for that, but I
8 got one more comment to say, is that I'm new at
9 this political game, but I'm old at the spiritual
10 ways of life with my tribe because I've been
11 elected to that position.

12 What I want to say to you is that with
13 all this money that's been spent on me traveling
14 from here to New York, to wherever else these
15 meetings are, I could have probably fed about 20
16 to 40 people in that time, you know, and I just

17 want you to understand that these travels have
18 cost us a lot of money to come to speak to you
19 and to tell you no, we don't want these things.
20 I hope you put that into consideration
21 because it's really hard for us as Indian people.
22 It's hard for us people, you know, our community

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1 that we have, our casino, we only have 40
2 machines. It's way smaller than the rest of
3 these. We're just starting with these machines
4 that we're trying to develop and what we've done
5 with that money is we've given quite a bit to the
6 communities out there.

7 So, I just want to let you know, even
8 though we're a small casino tribe, but we're a

9 big land-based tribe with a lot of land, but
10 we're cutting our trees down. Pretty soon, we're
11 not going to have that kind of resources to help
12 fund our programs and stuff. So, we want to try
13 to depend on what's going on today for looking
14 towards the future.

15 I mean, this is the way the Indian
16 people are. We adapt and we adapt pretty darn
17 good and we want to keep doing that, and we don't
18 want to have this good confrontation or whatever
19 you want to call it between government-to-
20 government. That's what we want. We want to
21 have respect. You want respect from us, give us
22 the respect that we want, too. Look at us as

1 human beings. That's all I gotta say.

2 CHAIRMAN HOGEN: Thank you. Further
3 comment?

4 MS. JACKSON: Good afternoon, Chairman,
5 Vice Chairman.

6 My name is Tina Jackson. I'm the
7 Chairperson for the Soquemish Tribal Gaming
8 Commission. I'm here as the primary regulator
9 for gaming on the Soquemish Reservation, and as
10 the primary regulator, I wanted to mention that
11 we haven't had a problem with defining Class II
12 and Class III games.

13 We don't have a gray area or a blurry
14 line of what is a Class II and a Class III game,
15 and we have been doing a good job of being the
16 primary regulator for the Soquemish Tribe, but we
17 haven't had any consultation in this.

18 As the three regulating entities that
19 run gaming, federal government, the tribes, and
20 the states, we weren't consulted in this process.
21 We didn't work together as a team or as equal
22 entities in this, and so I feel that as a

1 regulator, that we haven't been given the voices
2 that we needed in this regulation to help
3 regulate this.

4 So, thank you.

5 CHAIRMAN HOGEN: Thank you.

6 MS. HAMEL: Good afternoon. First of
7 all, I just wanted to ask a question. I heard
8 you, Mr. Chairman, talk about economic study that
9 NIGC has begun, and I actually thought that they
10 were on the agenda.

11 Where are you at in that process, and
12 when will we have some answers to some of these
13 questions that have come up today concerning the
14 economic analysis?

15 CHAIRMAN HOGEN: The Commission has

16 contracted with an entity that is trying to get
17 its hands around the numbers that are out there,
18 and as you know, they're not always readily
19 available inasmuch as that's proprietary
20 information.

21 NIGC does have total revenue figures
22 from all the tribes by virtue of the annual

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1 audits that are received, but that information
2 doesn't have to be and ordinarily is not broken
3 down with respect to Class II/Class III.

4 One of the challenges we have in trying
5 to do an economic analysis is do we just look at
6 what's going on now and what we think would
7 happen if these rules would go into place or do

8 we look at the proposition that what is going on
9 now, at least in some places, is beyond the pale,
10 constitutes illegal Class III gaming, and if that
11 is true, what consideration do we give to those
12 numbers, and so we're trying to come up with
13 something that's meaningful.

14 A challenge to me, and I'm trying to
15 gather information in this connection but not
16 finding as much of it as I would like, I know
17 that when folks go to the casino, go to the bingo
18 hall, they ordinarily have some idea of how much
19 they're going to spend, how much they're going to
20 lose before they go home.

21 I guess it's not accepted by me yet that
22 if a machine plays five times faster, that those

1 people would necessarily spend or lose five times
2 more dollars and so for that reason, I want to be
3 sure that I have confidence in whatever the
4 relationship is between speed of play and the
5 amount of revenue that would be generated.

6 So, I originally thought we might be
7 able to make a presentation at this juncture here
8 at the hearing, but we just haven't got enough
9 information that we have enough confidence in nor
10 have we studied it long enough.

11 So, obviously we've got a point in time,
12 the 30th of September, set as an event, end of
13 comment period. Whether that information will be
14 available by then or not, I don't know. I doubt
15 if it will be done by then, but hopefully not
16 long thereafter.

17 MS. HAMEL: Okay. Well, I guess just by
18 that, because I seen that they were on the agenda
19 and they did not present today, just by that
20 alone and with you not having those answers, it
21 seems to me that that would be reason enough to

22 look at extending the deadline. That was just

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1 the first comment that I had to make.

2 I'm here today. My name is Jami Hamel.

3 I am the Chair of the Montana Tribal Gaming

4 Association in Montana. I'm also a member of the

5 Confederated Salish and Kootenai Tribes, and I

6 was the past Vice Chairman of the Confederated

7 Salish and Kootenai Tribes. I served as Vice

8 Chair for four years and served on the Council

9 for eight years, and currently, I'm the Senior

10 Policy Analyst for the tribes.

11 So, I come from the different

12 perspectives of a tribal leader, as somebody that

13 works for the tribes, and as a leader for all of

14 the tribes in Montana, and I know, Mr. Chairman,

15 that you've heard me before.

16 I have followed these meetings. I am

17 lucky that my tribe has some money that they send

18 me to these different meetings to listen and to

19 keep track of what's going on. Many of the

20 tribes in Montana don't have that opportunity.

21 They don't have the economic revenue. They don't

22 have the resources to send their people, and I

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1 was really disappointed when the Montana Tribal

2 Gaming Association sent you a letter requesting

3 that you come to Montana. It wasn't the first

4 request. It was a formal request by the

5 Association, but it was not the first request

6 that had been made by the tribes in Montana, and

7 I was disappointed that we were again denied.

8 Over the past couple of years, as this
9 issue has been talked about, I have went to every
10 meeting and I've made comments, and I know that
11 the request has been made to please come to
12 Montana. I've tried to explain the political
13 landscape that is currently in Montana.

14 The seven tribes that are in Montana are
15 really afraid of the gaming issue. They're
16 afraid to be associated because they're afraid
17 that their federal recognition would be impacted
18 by that and that's a sad thing, that a tribe has
19 to be afraid of that.

20 But all of the tribes in Montana have
21 joined together in a united effort on the issue
22 of gaming because the tribes in Montana

1 understand that we are never going to get rich on
2 gaming in Montana. The political landscape has
3 never been favorable to tribes in Montana when it
4 comes to the tribal state compacts.

5 We have currently and have always had
6 the worse compacts in the nation. We look at all
7 of our brothers and sisters doing well in Indian
8 gaming and Montana tribes are way below that.

9 We cannot compete politically or, more
10 accurately, financially with the Montana Taverns
11 Association. They kind of run the show in
12 Montana. They support the legislators in Montana
13 and the state has no intentions now, and I don't
14 think ever, to negotiate in good faith, and as
15 some of the previous speakers have said, you
16 know, the Seminole decision has eroded that for
17 us to get the states to negotiate in good faith.

18 The state and the non-Indian gaming
19 facilities in Montana continue to benefit at a
20 rate that is outrageous to all of the tribes in

21 Montana, and I'll just give you an example of
22 Class III machines that are in Montana. There

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1 are 17,000+ Class III machines that are operated
2 by the State of Montana and non-Indian operators.
3 There are less than a thousand for all seven of
4 the tribes in Montana. Just financially, you can
5 see the disparity. It's not right when the
6 intent for Indian gaming was supposed to benefit
7 tribes. It does not benefit the tribes in
8 Montana. It never has.

9 Class II has been the only leverage that
10 tribes have looked at to, you know, look at that
11 disparity within gaming that currently exists in
12 Montana, and these proposed regulations destroy
13 the only chip that the tribes in Montana held

14 when they sat at the negotiation table across

15 from the State of Montana.

16 Class II has been the only viable

17 economic avenue that tribes could utilize, some

18 revenue that they could use to provide for just

19 the basic needs of our people.

20 NIGC has a trust responsibility to

21 promote tribal economic development, tribal self-

22 sufficiency, and strong tribal government. In

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1 Montana, this is not the case because Class III

2 benefits the non-Indians.

3 So, I'm asking that you please allow the

4 opportunity for Class II economic benefit to

5 tribes by withdrawing the current proposed

6 regulations. Instead of fearing the potential of
7 what might happen, you should be proud and revel
8 in the fact that tribal gaming commissioners do
9 their job.

10 Indian gaming is a very regulated and
11 well-maintained business. Tribal integrity is
12 strong. Please allow tribes to continue to exert
13 their sovereign right to have gaming as an
14 economic opportunity to serve the needs of our
15 people.

16 Thank you.

17 CHAIRMAN HOGEN: Thank you.

18 COMMISSIONER CHONEY: For your
19 information, --

20 (Applause.)

21 COMMISSIONER CHONEY: -- ma'am, we're
22 coming out to Montana on November 3rd.

1 MS. HAMEL: Thanks.

2 MR. McWATERS: Chairman Hogen, my name
3 is Randy Mcwaters. I'm Quapaw from Quapaw,
4 Oklahoma, member of the Business Committee and
5 Game Incorporation.

6 I have been like everyone else. There's
7 a lot of Indian brothers and sisters here today
8 that has voiced their opinion and I was listening
9 to the young man that was up there speaking in
10 his native tongue, voicing his opinion. I was
11 talking to a gentleman back in the back, talking
12 about a code talker during World War II, Charlie
13 Tagbiddy.

14 Many people in this room knew Charlie
15 Tagbiddy. He helped win the war for Native
16 Americans. This young man up here had an
17 interpreter. I was watching your face as he was
18 talking. You didn't know what he was saying.

19 It is our endeavor to help the Indian

20 people for what we're trying to do, for the
21 integrity of the Indian people. As our code
22 talker did, this young man was our code talker,

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1 and I'd appreciate you listening to us.

2 Thank you.

3 CHAIRMAN HOGEN: Thank you.

4 MR. DECKER: Good afternoon, Mr.

5 Chairman, --

6 CHAIRMAN HOGEN: Good afternoon.

7 MR. DECKER: -- Commissioner Choney,

8 NIGC staff.

9 My name is Daniel Decker. I'm a member

10 of the Confederated Salish and Kootenai Tribes,

11 partner in Decker and Katenai Law Firm, actually

12 here today on behalf of the two clients, Santa

13 Rosa Rancheria Tachi Yokut Tribe in Central
14 Valley, California, and Confederated Salish and
15 Kootenai Tribes of the Flathead Nation of
16 Montana.
17 I was asked by the Chief of the Santa
18 Rosa Rancheria and Tachi Tribe, Clarence Atwell,
19 Jr., to please deliver a message on his behalf at
20 this hearing, and I would be remiss not to do
21 that. So, the first part of my comments will be
22 concentrated on what Chief Clarence wanted to

1 convey.
2 Part of what his concern in terms of his
3 understanding of the regulations, they started
4 gaming nearly 25 years ago with bingo, like other

5 tribes in California. The backbone of their
6 gaming industry is Class II gaming. That's what
7 provided them the foundation. That's what
8 provided them the leverage in terms of their
9 compacting. It was that they had viable gaming
10 operations going without the Class III
11 operations. That certainly helped them leverage.

12 Part of the Chief's concern is that
13 other tribes in California have the same
14 opportunity, they have the same leverage that
15 they were once afforded and part of it is his
16 concern of when the 99 California compacts come
17 to an end, what remains, because without
18 leverage, they get held up by the states.

19 His feeling was that he feels like the
20 federal government has been remiss in their
21 responsibilities because the federal government
22 has turned their heads aside when states insist

1 on revenue-sharing when the law itself says that
2 Indian gaming revenues cannot be taxed.

3 When you've got a sliding percentage,
4 whether it's gross revenue or net revenues, if it
5 looks like a tax and smells like a tax, I guess
6 it's a tax, but we all look aside from what the
7 states have done because of their failure to
8 negotiate in good faith, their failure to live up
9 to the deal that Henry Buffalo talked about
10 earlier today, their failure to be willing to
11 waive their immunity to sue and test the good
12 faith issue in favor of them being able to take
13 the revenue from tribal game revenues that are
14 sadly needed by the tribes.

15 The Chief was concerned that the federal
16 government hasn't lived up to that responsibility
17 as we've heard earlier, but part of his bigger
18 concern was that Class II has to remain

19 economically viable for tribes. He feels that
20 the proposal that's on the table will not do
21 that, that just as Indians are like white-tailed
22 deer and we adapt with the times, so should we be

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1 allowed to adapt our gaming opportunities with
2 the technology to keep the customer happy.
3 The industry has told us and Chairman
4 Macarro, I liked his solution. Let's put a Class
5 II sign on the machine and keep going. The
6 industry is there to provide entertainment.
7 Tribes are being successful at that. It more
8 looks like tribes are being penalized because
9 they're being economically successful.
10 Chairman Atwell made a very good
11 statement. He said 25 years ago, where was

12 California when I had multiple families still at
13 home? Where was California when we didn't have
14 good drinking water? Where was the federal
15 government when we didn't have good drinking
16 water? Where were they with their assistance
17 when we didn't have good sewer systems?

18 Today, the tribe has a 150 new homes,
19 sewer and water, education facilities, a new
20 health clinic, new schools that they've done in
21 the past three years. They've built a new
22 community facility for the youth. They've

1 contributed to youth programs. They have a
2 scholarship program for tribal youth where they
3 can virtually go to any institution where they're

4 accepted. They've contributed to the local law
5 enforcement. They've contributed to the fire
6 departments, and they've contributed to the local
7 economy and communities far beyond what the
8 agreement was with the State of California.

9 They share their revenue and tribes
10 spend the revenue on services needed by all of
11 the reservation community and their neighbors.
12 It's not like Donald Trump. It's not like Steve
13 Wynn where they put the profits in their pocket.
14 Tribes spend it on the local communities.

15 Chief Atwell's main part of his message
16 was Class II needs to remain economically viable.
17 Why tax tribes because they're being successful?
18 Why take away that leverage and allow the states
19 to continue to hijack tribes not only in
20 California but other states? They're able to do
21 that because we can't sue them for bad faith
22 because they won't waive their immunity to suit.

1 They won't keep the deal that was made in 1988.

2 In Montana, we've got a bit of a
3 different story. With the Salish and Kootenai,
4 as has been explained, demographics are totally
5 different. The rural economies, a lot fewer
6 people, but gaming is still viable. They're
7 talking about communities where one of the most
8 economically-successful tribes in Montana, Salish
9 and Kootenai, has an unemployment rate of 45
10 percent.

11 An economically-viable operation in
12 Montana might be purely employment alone and
13 Class II gaming is providing that opportunity.
14 We're seeing some exciting new developments in
15 Montana where we never thought possible before
16 with really isolated reservations where people
17 are coming to play the game because it provides

18 entertainment that they can't get elsewhere in
19 the state, but it's a Class II opportunity that
20 those customers are enjoying. It's a Class II
21 opportunity that will cease to exist if your
22 regulations go through.

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1 It's in the areas that need that
2 economic viability the most, where there's rural
3 isolation, where the state won't negotiate in
4 good faith, where the state is unwilling to
5 recognize the purpose of IGRA, economic
6 development in Indian Country, that that leverage
7 be taken away.

8 So, as Reuben Mathias said earlier,
9 likewise the tribes in Montana look forward and
10 not back. They look forward to the day when they

11 can have better employment opportunities. They
12 look forward to that time and many other things
13 have been tried in terms of economic development.

14 The other thing is that from those
15 gaming operations, those small modest operations
16 that are out there, tribes are already looking at
17 how to diversify that dollar, not just
18 concentrating on gaming as the only game in town
19 but taking that gaming dollar and turning it into
20 convenience stores, taking that gaming dollar and
21 doing other things with it.

22 What few dollars are left over after

1 necessary services, the ability to take what few
2 dollars are left to maybe do something else, but

3 to take away a gaming opportunity that's
4 currently viable to create something that won't
5 attract a customer to a rural isolated area, I
6 think is poor federal decisionmaking.

7 What the issue is about for two of the
8 tribal leaders that I work with is purely a
9 sovereignty issue as well. It's a failure of our
10 federal partner to recognize what was perceived
11 initially to be a regulatory partnership, that
12 tribes be the primary regulators, that NIGC would
13 have some oversight in terms of code
14 responsibility in the area of Class II, but that
15 we would be partners in regulation, but that's
16 not what's happening here, gentlemen.

17 What's happening here is big brother is
18 telling tribes how to do business rather than
19 affording our regulatory bodies, our commissions
20 into making some of these decisions and building
21 that administrative record on what is a Class II
22 or a Class III device. No, big brother's going

1 to come in and tell us how it should be done.

2 That's intruding on tribal sovereignty. That is

3 not improving tribal self-sufficiency. That is

4 not good tribal self-government.

5 Thank you.

6 CHAIRMAN HOGEN: Thank you, Mr. Decker.

7 (Applause.)

8 CHAIRMAN HOGEN: Further comments or

9 questions? Yes, sir?

10 MR. COLEMAN: Mr. Hogen, Mr. Choney,

11 Bill Coleman again from the Nooksack Tribe.

12 I've been up here a couple of times to

13 talk to you. My voice has broke up a couple of

14 times and I don't know why I need to be nervous

15 to talk with you. I've talked to a lot of bigger

16 audiences before and stuff like that, but nothing

17 is going to compare when I go home, and I have to
18 talk to my elders.
19 My elders, they have been on councils
20 before. My aunt and my uncle, they're going to
21 ask me what did you accomplish there, and I want
22 you, this being my final statement, just for

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1 everybody here that is representing tribes, their
2 people, their relatives, what are you going to
3 give to us to bring back to be a witness for you
4 to tell these people that we accomplished today?
5 They're going to ask me. Did you look them in
6 the eyes? Did you see their Indian teachings?
7 Did they hear what you needed to say?
8 So, when I go back to Washington State,
9 when I go back to sit down and eat with my

10 elders, they're going to want to know. You spent
11 a lot of money, Bill, going over there to see
12 them people. What did you get done? Let's give
13 us the help here in this audience and say we
14 accomplished something.

15 Thank you.

16 CHAIRMAN HOGEN: Thank you.

17 (Applause.)

18 MR. KERNS: Mr. Chairman, Commissioner
19 Choney.

20 Randy Kerns. I'm with Planet Bingo, and
21 I have handled our regulatory compliance.

22 I'd just like to comment very briefly on

1 a couple of points that I've heard today. My

2 background is regulation of gaming from the State
3 of Washington. I worked for the Washington State
4 Gambling Commission for many years. I was also a
5 police officer in the City of Kemp, Washington,
6 when the Washington State RCW, Revised Code of
7 Washington, 946 was passed authorizing gambling
8 in the state.

9 I'm one of the people that saw bingo
10 grow from people actually playing and seeing them
11 play with beans on hard cards to shutter cards to
12 paper cards, and every iteration of that sped up
13 the game. Everything created more decisions
14 which decisions bring more money for players and
15 for the operation. The more games you can play
16 an hour, the more prizes you can offer, the more
17 revenue goes into the coffers of the organization
18 running the gaming.

19 The issue with that, you graduate from
20 that to seeing the electronics come in during my
21 career. The electronics take the place of the
22 paper. That's all they're doing. If you're

1 still playing bingo, like Eric Casey said, if
2 you're playing bingo and it meets the definition,
3 it's session bingo.

4 The other issue that I'd like to talk on
5 is games with predrawn numbers. That's a bonanza
6 game. Those games were in place in the State of
7 Washington in 1974, right after gaming was
8 legalized. They're still played in the State of
9 Washington today and in many other markets.

10 I certainly haven't seen anything that I
11 would classify in them as evil over all the
12 years, and I would also say that they predate
13 IGRA in virtually all the regulated environments
14 in the states that I know of by a number of years
15 and as such would be a commonly-played game of

16 bingo at the time IGRA was passed, and I'm pretty
17 comfortable with that because one of the
18 architects of IGRA was Senator Dan Evans from the
19 State of Washington who happened to be Governor
20 Dan Evans when gambling was authorized in the
21 State of Washington and he's a very strong
22 student of any legislation that he signs.

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1 That's all.

2 CHAIRMAN HOGEN: With respect to the
3 predrawn number proposition, much has been said
4 about these three elements that's in the Indian
5 Gaming Regulatory Act that relate to bingo, that
6 just those ought to be relied on, and one of
7 those says that the players cover their numbers
8 when they are called.

9 Now, how do you square that with
10 predrawn numbers?

11 MR. KERNS: How it has been squared that
12 I'm aware of in the state regulations is you
13 predraw a set of numbers that is not going to
14 create an automatic winner and then you draw on
15 from there.

16 The whole idea behind the game
17 originally, to have predrawn numbers where you
18 sold cards, was to increase sales. What you were
19 trying to do with creating that set was you sold
20 the sealed cards, the players opened them up and
21 looked at them. The player said, oh, gee, I
22 don't have much of a chance with these first 24

1 or 30 or 40 numbers, whatever was chosen to be
2 predrawn. The player then went and they traded
3 that card back in with some more money, which
4 generated more sales and better prizes for that
5 particular game for the organization. The game
6 was then determined by the drawing of additional
7 numbers off of that predetermined set in order to
8 achieve a winner.

9 CHAIRMAN HOGEN: Thank you for that
10 explanation, and I think we understand that, but
11 I don't think the environment in which the
12 bonanza bingo is played is constrained by that
13 language, cover when the number is called, but
14 nevertheless, we understand your point, and with
15 respect to converting from paper to electronic, I
16 mean, with paper, you cover your numbers when
17 they're called and that, I think, would need to
18 be true in the electronic format as well and
19 that's the approach we're trying to take.

20 MR. KERNS: Wouldn't disagree with you
21 there, Mr. Chairman.

22 CHAIRMAN HOGEN: Thank you. Mr.

1 Webster?

2 MR. WEBSTER: Yes. Mr. Chairman, I just
3 want to make a brief comment about the one issue
4 because I know that's one that we certainly
5 looked at extensively and discussed with your
6 staff extensively over the years.

7 The way that we square it is you look at
8 the word "win," if you look at the dictionary
9 definition, one of the dictionary definitions of
10 win is if, it's conditional. So, you cover the
11 space on your card when, if a matching number is
12 drawn or electronically determined.

13 So, we don't see any inconsistency.

14 It's not a time issue. It's not a temporal

15 thing. It's not saying you have to do it at the
16 same time. It's saying that you cover if there's
17 a matching number that's drawn or electronically
18 determined, and certainly it's consistent with
19 the Indian Canon of Construction to interpret it
20 in the light most favorable to the tribes. We
21 think that that is the reading that should be --
22 the meaning that should be given to it.

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1 Thank you.

2 CHAIRMAN HOGEN: Thank you. Further
3 comments or questions?

4 (No response.)

5 CHAIRMAN HOGEN: Well, if there are
6 none, Commissioner Choney, do you have any
7 concluding remarks?

8 COMMISSIONER CHONEY: Yes. I want to
9 just give you our appreciation or my appreciation
10 for your questions and comments. I know they
11 came from the heart, and I know you have your
12 tribal members and your gaming operations at
13 heart.

14 However, I have picked up the perception
15 that you seem to think we already have our minds
16 made up. Well, I want to assure you right now
17 that we don't.

18 What I've heard today, what I've heard
19 for the last two months on the consultation,
20 actually goes back further than that, as far back
21 as two years ago when we started all of this,
22 we're listening to these comments and opinions

1 from everyone and no, we do not have our mind
2 made up. If we did have our minds made up, we
3 would not be sitting here today.

4 One other comment I would like to make
5 is our advisory committee that we empaneled. We
6 received a letter or I saw a letter yesterday
7 signed by one of the members of that panel, he
8 was on the first panel today, basically saying
9 that we did not list any input that they had, any
10 input that they provided.

11 Well, he was a little premature in
12 writing a letter like that. I think he should
13 write a letter like that after we release the
14 final draft or whatever we wind up doing in this
15 and so I want to just rest assure everyone we do
16 not have our mind made up.

17 Concluding Comments

18 CHAIRMAN HOGEN: I, too, want to thank
19 everyone that came to speak and everyone that
20 came to listen and want to assure you that, you
21 know, not only did I listen but hopefully I heard

22 what was said.

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1 I would like to, you know, be popular
2 and I'd like to give you everything that you ask
3 for, but the oath that I took doesn't permit me
4 to always give the popular response or popular
5 answer. Try to find the right answer and that's
6 exactly what I'm going to try and do.

7 The information that we received was
8 extremely helpful, and it covered the full
9 spectrum. I know the plight of the Kickapoo of
10 Texas and I know how unfair the environment is in
11 which they operate there. I know what Poarch
12 Creek is up against there when the state won't
13 come to the table and there seems to be

14 challenges at every turn and then along comes
15 NIGC and says, well, we're going to tighten this
16 up some more.
17 We're going to try and do the right
18 thing. We're going to look at the law, you know.
19 Senator Evans was mentioned here a moment ago. I
20 was on the airplane when I flew back from South
21 Dakota here this weekend reading the Senate
22 debate on IGRA in 1988. Senator Brock Adams also

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1 from Washington was one of the participants in
2 that debate.
3 Never once was technology and Class II
4 mentioned. I think the only subject that touched
5 on that in the Floor debate on the Senate was
6 Senator Harry Reid who was concerned about the

7 fact that the Johnson Act would still comply.

8 If you read just the Floor debates, and
9 I know that's not all of the legislative history,
10 you'd come away, I think, with the feeling that
11 they were categorizing casino gaming, whatever
12 that is, in one category and bingo in another.

13 So, I'm going to consider that and I'm
14 also going to very seriously consider all of the
15 heartfelt testimony that's been given here and
16 the statements and the questions, and we also
17 look forward to anything further that might be
18 sent to us between now and September 30th, and we
19 will certainly consider if September 30th is a
20 premature time to call that to a conclusion.

21 So that being said, I want to thank you
22 very much for your participation and please wish

1 us well because we need all the help we can get

2 as we try to get to the right place.

3 Thank you. Hearing is adjourned.

4 (Whereupon, the public hearing was

5 adjourned at 5:15 p.m.)

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